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SERVICE DATE – JUNE 11, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-471 (Sub-No. 4X)

SOUTH KANSAS AND OKLAHOMA RAILROAD COMPANY–
ABANDONMENT EXEMPTION–IN CRAWFORD, WILSON, ELK AND GREENWOOD
COUNTIES, KS AND OSAGE AND TULSA COUNTIES, OK

Decided: June 6, 2002

South Kansas and Oklahoma Railroad Company (SKO) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon: (1) a 35-mile line of railroad between milepost 153.0 near Tulsa and milepost 188.0 near Barnsdall, in Osage and Tulsa Counties, OK; (2) a 6-mile line of railroad between milepost 359.0 at Pittsburg and milepost 365.0 at Cherokee, in Crawford County, KS; and (3) a 23.5-mile line of railroad between milepost 438.5 at Severy and milepost 415.0 at Fredonia, in Wilson, Elk, and Greenwood Counties, KS.¹ On November 29, 2000, a decision and notice of interim trail use or abandonment (NITU) was served authorizing a 180-day period for SKO to negotiate a trail use agreement with: (1) the City of Pittsburg for the 6-mile portion of the right-of-way between milepost 359.0 near Pittsburg and milepost 365.0 near Cherokee; and (2) the Trust for Public Land (TPL) for the 35-mile portion of the right-of-way between milepost 153.0 near Tulsa and milepost 188.0 near Barnsdall.

By decisions served June 1, 2001, and December 31, 2001, the negotiation period under the NITU was extended at the request of TPL to May 24, 2002, for the portion of the right-of-way between milepost 157.10 and milepost 188.0. By decision served February 8, 2002, the negotiation period under the NITU was extended at the request of the City of Pittsburg to June 30, 2002, for the portion of the right-of-way between milepost 359.0 at Pittsburg and milepost 365.0 at Cherokee.

In a joint motion filed April 3, 2002, TPL and Tulsa County (County) filed a request for substitution of the County as the new interim trail user and the termination of TPL as the interim trail user for the portion of the right-of-way between milepost 157.10 and 163.21. By decision served

¹ Notice of the exemption was served and published in the Federal Register on October 6, 2000 (65 FR 59891-92).

April 24, 2002, the proceeding was reopened and the November 29, 2002 decision was vacated as to the segment between milepost 157.10 and milepost 163.21, and the County was authorized to replace TPL as the new trail user over the involved right-of-way, effective April 24, 2002. The expiration date of the negotiating period remained the same for the portion of the right-of-way between mileposts 163.21 and 188.0.

By facsimile filed on May 28, 2002, TPL requests an additional 180-day extension of the negotiating period covering the portion of the line between mileposts 163.21 and 188.0. TPL states that it and SKO are continuing to negotiate an interim trail use agreement but were unable to complete negotiations before May 24, 2002. Also, by facsimile filed on May 29, 2002, the City of Pittsburg filed a request to extend the negotiating period for the right-of-way between milepost 359.0 and milepost 365.0 for an additional 180 days. The City of Pittsburg states that it and SKO are continuing to negotiate an interim trail use/rail banking agreement and are continuing to make progress toward achieving an agreement. In separate filings on May 29, 2002, and June 4, 2002, SKO states that it has not consummated the abandonment of the rights-of-way between milepost 163.21 and mileposts 188.0, and milepost 359.0 and milepost 365.0, and is agreeable to the extension requests.

Where, as here, the carrier has not consummated the abandonment and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended.² Under the circumstances, further extension of the negotiation period is warranted for the portion of the rights-of-way between milepost 163.21 and milepost 188.0, and milepost 359.0 and milepost 365.0. Accordingly, the NITU period will be extended to November 20, 2002, for the portion of the right-of-way between milepost 163.21 and milepost 188.0, and extended to December 27, 2002, for the portion of the right-of-way between milepost 359.0 and milepost 365.0.

This decision does not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

1. The negotiation period under the NITU for the right-of-way between milepost 163.21 and milepost 188.0 is extended to November 20, 2002, and the NITU is also extended through December 27, 2002, for the right-of-way between milepost 359.0 and milepost 365.0.

² See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

2. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary